

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY LAGOS

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E.O. 11652: N/A

TAGS: EINV

SUBJECT: AIG CASE

REFS: (A) LAGOS 0175; (B) 77 STATE 137118; (C) 76 STATE
081210

1. CONTRARY TO AIG OFFICIALS REMARK REPORTED PARA 7, REF
A, DEPT HAS NOT REACHED ANY DECISION REGARDING VALIDITY
OF AIG EXPROPRIATION CLAIM AGAINST FMG FOR TRANSFER OF 49
PERCENT OF AIIC STOCK. AIG HAS PRESENTED BRIEF CONTAINING
ESSENTIAL ELEMENTS OF EXPROPRIATION CLAIM, BUT HAS NOT
ASKED THAT INTERAGENCY GROUP MAKE DETERMINATION OF THIS
CLAIM'S VALIDITY. BRIEF HAS BEEN STUDIED BY INTERAGENCY
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EXPROPRIATION GROUP MEMBERS, BUT NO FORMAL DISCUSSION OR
ACTION HAS BEEN TAKEN TO REACH A USG POSITION ON THE
CLAIM. PENDING FURTHER DEVELOPMENTS IN NEGOTIATIONS WE
WILL CONTINUE TO VIEW ISSUE AS SERIOUS INVESTMENT DISPUTE
WHICH WE HOPE WILL BE SETTLED TO MUTUAL SATISFACTION OF
FMG AND AIG. WHAT FOLLOWS IS FOR EMBASSY INFORMATION AND
FOR USE IN DISCUSSING EXPROPRIATION AND ITS IMPLICATIONS

WITH FMG.

2. EXPROPRIATION INVOLVES A TAKING OF PROPERTY OR PROPERTY RIGHTS BY A HOST GOVERNMENT. THE U.S. RECOGNIZES THE

RIGHT OF A HOST GOVERNMENT TO EXPROPRIATE FOREIGN INVESTORS, BUT BELIEVES THAT THIS MUST BE CARRIED OUT IN ACCORDANCE WITH INTERNATIONAL LAW. UNDER INTERNATIONAL LAW, SUCH A TAKING MUST BE FOR A PUBLIC PURPOSE, NONDISCRIMINATORY AND ACCOMPANIED BY PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION. USG POLICY REGARDING COMPENSATION IS THAT IT SHOULD REFLECT FAIR MARKET VALUE (REF C). NORMALLY, THIS IS BEST ESTIMATED BY THE "GOING CONCERN" VALUATION CONCEPT, AND INCLUDES THE PRESENT VALUE OF FUTURE EARNINGS IN THE ASSET VALUATION. IN CASES WHERE GOING CONCERN VALUATION IS NOT RELEVANT, OTHER STANDARDS MAY BE USED. HOWEVER, NET BOOK VALUE IS GENERALLY CONSIDERED TO BE THE LEAST ACCEPTABLE METHOD OF ESTIMATING FAIR MARKET VALUE.

3. IN AIG CASE, THE TWO QUESTIONS FOR WHICH DECISION BY EXPROPRIATION GROUP WOULD BE REQUIRED ARE:

-- WAS AIG COERCED INTO ACCEPTING BOOK VALUE FOR 49 PERCENT OF STOCK TRANSFERRED TO FMG IN 1976?

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-- IS THE PAYMENT OF BOOK VALUE INADEQUATE COMPENSATION? ON THE FIRST QUESTION, NO FORMAL POSITION HAS YET BEEN REACHED. ON THE SECOND, WE HAVE EXPRESSED PRELIMINARY VIEW THAT COMPENSATION PAID SEEMS QUITE LOW AND MAY WELL BE INADEQUATE. (REF B.)

4. IF EXPROPRIATION GROUP ULTIMATELY DETERMINES THAT FMG ACTION IS INADEQUATELY-COMPENSATED EXPROPRIATION OF AIIC STOCK, THEN FAILURE OF FMG TO MAKE ARRANGEMENTS TO PAY COMPENSATION (SEE PARA 5) WOULD RESULT IN RECOMMENDATION BY EXPROPRIATION GROUP THAT SANCTIONS REQUIRED BY APPLICABLE U.S. LAW SHOULD BE INVOKED. THESE WOULD INCLUDE SUSPENSION OF BILATERAL AID (WITH EXCEPTION OF HUMANITARIAN ASSISTANCE) UNDER HICKENLOOPER AMENDMENT TO FOREIGN ASSISTANCE ACT; OPPOSITION TO LOANS TO NIGERIA BY IFIS UNDER GONZALEZ AMENDMENTS TO IFI PARTICIPATION ACTS; AND WITHDRAWAL OR SUSPENSION OF ANY GSP STATUS UNDER SECTION 502 OF 1974 TRADE ACT. HICKENLOOPER AND TRADE ACT INCLUDE PRESIDENTIAL NATIONAL INTEREST WAIVERS, GONZALEZ DOES NOT.

5. ARRANGEMENTS OR APPROPRIATE STEPS MEETING LEGISLATIVE

REQUIREMENTS WOULD INCLUDE: GOOD FAITH NEGOTIATIONS TO REACH A SETTLEMENT, SUBMISSION OF CASE TO ARBITRATION, INDEPENDENT VALUATION OF ASSETS OR OTHER ARRANGEMENTS LEADING TO PROMPT PAYMENT OF ADEQUATE COMPENSATION. (FYI. OTHER ARRANGEMENTS CAN INCLUDE MAKING LOCAL COURTS AVAILABLE FOR CHALLENGE TO HOST GOVERNMENT ACTION WHEN

SUCH A CHALLENGE HAS MEANINGFUL CHANCE OF PRODUCING COMPENSATION. END FYI)

6. IF AIG EXPROPRIATION CLAIM WERE ULTIMATELY FOUND VALID, WE WOULD FORMALLY NOTIFY FMG OF OUR DECISION AND OF THE SANCTIONS WHICH WOULD BE REQUIRED UNDER U.S. LAW IF NO STEPS ARE TAKEN TO REACH A MUTUALLY ACCEPTABLE LIMITED OFFICIAL USE

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SETTLEMENT. INTERAGENCY GROUP WOULD REVIEW SUBSEQUENT FMG ACTIONS TO INSURE THAT THEY SATISFY REQUIREMENTS OF U.S. LAW RE COMPENSATION. SHOULD INTERAGENCY GROUP DETERMINE THAT FMG IS NOT SATISFYING THESE REQUIREMENTS, IT WOULD RECOMMEND THAT SANCTIONS BE INVOKED. SANCTIONS WOULD BE CARRIED OUT BY TREASURY (IFI VOTES AND EFFORTS TO PREVENT LOANS FROM COMING FORWARD IN IFIS), AID (BILATERAL ASSISTANCE, ALTHOUGH IT IS NOT CLEAR THAT THIS WOULD INCLUDE SECTION 607 PROGRAMS) AND SPECIAL TRADE REPRESENTATIVE (GSP). SANCTIONS WOULD REMAIN IN EFFECT UNTIL EXPROPRIATION GROUP DETERMINED FMG WAS TAKING APPROPRIATE STEPS TO PROVIDE COMPENSATION.

7. WE RECOGNIZE THAT WITH EXCEPTION OF NEGATIVE VOTES IN IFIS, SANCTIONS WOULD HAVE LITTLE DIRECT EFFECT ON NIGERIA AT PRESENT. HOWEVER, THEY WOULD EFFECTIVELY PREVENT FAVORABLE CONSIDERATION OF FUTURE BILATERAL AID OR GSP STATUS AND IF PUBLICIZED (WHICH COMPANY IS VERY LIKELY TO DO) COULD HAVE NEGATIVE IMPACT ON U.S. INVESTOR VIEWS OF NIGERIAN INVESTMENT CLIMATE. INVOCATION OF SANCTIONS WOULD ALSO BE PROBLEM FOR OUR GENERALLY IMPROVING BILATERAL RELATIONS.

8. YOU MAY DRAW ON PARAS 2, 4, AND 5 IN DISCUSSING WITH NIGERIANS POTENTIAL PROBLEMS WHICH WILL ARISE IF AIG REQUESTS A DETERMINATION ON ITS EXPROPRIATION CLAIM. YOU SHOULD ALSO NOTE THAT REGARDLESS OF USG'S POSITION ON SUCH A CLAIM, THE PUBLICITY ATTACHED TO THE PRESSING OF SUCH A CLAIM BY AIG WOULD BE DAMAGING TO NIGERIA'S EFFORTS TO ATTRACT NEW U.S. INVESTORS. CHRISTOPHER

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